THE HON'BLE SRI JUSTICE N.V. RAMANA

Writ Petition No. 20027 of 2006

Dated: 02.11.2007

Between:

Kothula Janaki Ramaiah.

..... PETITIONER

AND

The Depot Manager, APSRTC,
Ibrahimpatnam Depot, Ibrahimpatnam,
Vijayawada, Krishna District and another.

.....RESPONDENTS

THE HON'BLE SRI JUSTICE N.V. RAMANA

Writ Petition No. 20027 of 2006

Order:

This writ petition is filed seeking to quash the award passed by respondent No.2-Labour Court, Guntur, in I.D. No. 250 of 1999, dated 08.12.2004, in so far as denying the back wages, continuity of service and other monetary benefits.

The petitioner was appointed as Driver in respondent No.1-Corporation in the year 1990. He was issued a charge sheet dated 22.12.1995 alleging that he was unauthorisedly absent from duties from January 1995 to October 1995. The petitioner, having acknowledged the same, did not submit any explanation. Thereafter, an enquiry was conducted into the charges. The Enquiry Officer, having conducted the enquiry, held the charges proved. Based on the findings of the enquiry report, a notice dated 30.09.1996 calling upon the petitioner to show cause as to why he shall not be removed from service was issued. However, vide order dated 10.06.1997, respondent No.1-Corporation removed the petitioner from service. Against the order of removal, the petitioner filed an appeal before the appellate authority, which was rejected. Thereafter, the petitioner raised an industrial dispute in I.D. No. 250 of 1999 and the Labour Court, vide the award impugned in the writ petition, set aside the order of removal and directed respondent No.1-Corporation to reinstate the petitioner into service without continuity of service and backwages. Assailing the award of the Labour Court, in so far as denying the back wages and continuity of service, the petitioner filed the present writ petition.

Heard the learned counsel for the petitioner and the learned Standing Counsel for respondent No.1-Corporation. Both the counsel represent that the Labour Court, without appreciating the material and evidence on record properly, and without applying its mind to the facts of the case, has passed the impugned award.

The impugned award passed by the Labour Court is very cryptic. It does not state whether the validity or otherwise of the enquiry, was decided as a preliminary issue. The Labour Court, after framing the point that arises for consideration, namely whether the charge against the petitioner is proved, if so, whether the punishment of removal of the petitioner from the service is in proportion to the charge, passed the following order:

> "**Point**: Ex.M2 is charge sheet dated 12.12.1995. The charge is that the petitioner was irregular in his duties, he availed twelve days leave, sick for thirty three days and absent for thirteen days. There is no explanation to the charge sheet.
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> Ex.M5 is enquiry report dated 02.03.1996. The petitioner was examined during enquiry. The petitioner stated that he availed twelve days leave. He also availed sick leave for thirty three days. He was absent for thirteen days.
>
> The petitioner admitted the charge. I, therefore, hold that the charge against the petitioner is proved, but the punishment or removal of the petitioner from the service is not in proportion to the charge. Hence, I answer the point accordingly.
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> In the result, this petition is partly allowed. The order of removal of the petitioner from the service is set aside. The petitioner shall be reinstated into service without backwages and without continuity of service. The petitioner is not entitled to any monetary benefit from the date of removal till the date of this order. The petitioner shall produce driving license and fitness certificate before the respondent Depot Manager. Award is passed accordingly."

In **Cooper Engineering Ltd., v. P.P. Mundhe**[1], the apex Court observed thus:

> "We are, therefore, clearly of opinion that when a case of dismissal or discharge of an employee is referred for industrial adjudication the labour court should first decide as a preliminary issue whether the domestic enquiry has violated the principles of natural justice. When there is no domestic enquiry or defective enquiry is admitted by the employer, there will be no difficulty. But when the matter is in controversy between the parties that question must be decided as a preliminary issue……"

It is surprising to note that the Labour Court has not given any

finding about the validity or otherwise of the domestic enquiry. The Labour Court, after giving a finding that the charge against the petitioner is proved, felt that the punishment of removal from service is not in proportion to the charge, and accordingly set aside the removal order and directed respondent No.1-Corporation to reinstate the petitioner into service without back wages and without continuity of service. I am unable to understand on what basis the Labour Court has passed such an order. The Labour Court has neither appreciated the evidence nor dealt with the issues framed by it properly, in that, it has not assigned any reason to justify how the punishment of removal imposed by respondent No.1-Corporation on the petitioner is disproportionate. The manner in which the Labour Court passed the impugned award, reflects that it has passed the same without applying its mind to the facts of the case.

Since the impugned award is a cryptic award and does not disclose any reasons justifying such an award, both the learned counsel for the petitioner as well as the learned Standing Counsel for respondent No.1-Corporation submitted that the impugned award be set aside and the matter be remanded to the Labour Court for adjudication of the matter afresh after giving reasonable opportunity to both the parties to adduce evidence.

In the above view of the matter, the impugned award cannot be sustained and the same is liable to be set aside. Therefore, the writ petition is allowed, and the impugned award is set aside. The matter is remanded to the Labour Court for fresh adjudication, after giving reasonable opportunity to both the parties to adduce evidence and after appreciation of the material placed on record. No costs.

N.V. RAMANA, J.

Date: 02.11.2007

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[1] (1975) 2 SCC 661